

**IN THE JUSTICE OF THE PEACE COURT NO. 16  
OF THE STATE OF DELAWARE  
IN AND FOR KENT COUNTY**

**OWNERS MANAGEMENT  
COMPANY,**

Plaintiff,

v.

**LACREDA L. HOUCHENS,**

Defendant.

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C.A. No. JP16-10-004933

Before **ARNDT, HUTCHISON** and **SHERLOCK**, Magistrates.

**ORDER**

This is a *de novo* appeal as provided by 25 Del. C. § 5717(a) to a Three Judge Panel from a decision dated November 1, 2010. The panel consisting of Judges Arndt, Hutchison, and Sherlock held trial on December 2, 2010.

Owners Management Company ("Plaintiff") was represented by Jeffrey J. Clark, Esquire. LaCreda L. Houchens ("Defendant") appeared *pro se*.

Plaintiff seeks possession on the basis that defendant violated the general restrictions and rules of the lease agreement and that the violations threatened the peaceful enjoyment, safety and health of the community.

After hearing testimony and reviewing the evidence, the panel finds for plaintiff.

### **TESTIMONY OF PARTIES AND WITNESSES**

Plaintiff introduced documentary evidence as follows: A notice of breach dated July 22, 2010 (Exhibit 1); Seven day termination letter dated September 16, 2010 with the Certificate of Mailing (Exhibit 2); and Model Lease for Subsidized Programs agreement between Owner's Management Company and LaCreda Houchens for Unit 5 located at 27 Linstone Lane, Milford, Delaware in the project known as Silver Lake Estates Apartments, dated December 9, 2009 (Exhibit 3).

Cpl. Geoffrey David of the Milford Police Department testified that he responded to a complaint that was reported by another tenant on August 21, 2010 at 1:22 a.m. Cpl. David stated that when he walked into the front lobby he could hear the music and he found the music to be coming from Apartment 5. Upon contacting the defendant about the complaint, he issued a city summons for noise violation.

PFC. Brad Harmon of the Milford Police Department testified that he was dispatched to a Disorderly Conduct complaint at Apartment 5 on August 29, 2010 at 3:05 a.m. Cpl. Harmon testified that when he walked into the foyer area, he could hear the music and that the music was coming from Apartment 5. Cpl. Harmon stated he banged on the door numerous times, but no one answered the door. He stated that he could hear movement within the apartment. While he continued to bang on the door, other tenants came out of their apartments to see what was happening. After receiving no answer at the door, Cpl. Harmon called the management to unlock the door. Prior to management arriving, the music was turned down and a male subject answered the door. Contact was made with defendant and a city summons was issued for noise violation. Cpl. Harmon also testified he was involved in the incident that resulted in defendant's arrest for

Hindering Prosecution. However, he was outside the unit when that offense occurred.

Sgt. Gary Bailey testified that there were more than five noise violations reported concerning defendant's apartment.

Morgan Beauchamp, the leasing manager testified that she received an e-mail from the Milford Police Department advising that they responded seven times to noise complaints on July 20 and 21, 2010. On July 22, 2010, defendant was sent a notice specifying that she had breached the rental agreement by committing noise violations.

Defendant testified and admitted to playing loud music on both occasions. Defendant remembered the dates because on August 21<sup>st</sup> she took her GED test and on August 29<sup>th</sup> she was celebrating after she had received notice that she passed the test. Defendant contends that the neighbor making the complaints is calling the police out of spite.

### **DISCUSSION**

Defendant violated general restrictions and rules of the lease agreement. Relevant portions of the lease agreement state in part:

"...The Tenant agrees not to ... use the unit for unlawful purposes" or "engage in or permit unlawful activities in the unit, in the common areas or on the project grounds...." (Lease agreement, p. 2, Items 13b and 13c).

"The Tenant agrees to obey the House Rules ...." (Lease agreement, p. 2, Item 14).

The lease specifies that the Landlord may terminate tenancy for numerous reasons which include in part:

1. the Tenant's material noncompliance with the terms of this Agreement;
2. the Tenant's material failure to carry out obligations under any State, Landlord and Tenant Act;

\* \* \*

6. criminal activity by a tenant, any member of the tenant's household, a guest or another person under the tenant's control:
  - a. that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents (including property management staff residing on the premises); or
  - b. that threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises;

\* \* \*

10. if the Landlord determines that the tenant, any member of the tenant's household, a guest or another person under the tenant's control has engaged in the criminal activity, regardless of whether the tenant, any member of the tenant's household, a guest or another person under the tenant's control has been arrested or convicted for such activity. (Lease agreement, p. 3, Items 23c 1, 2, 6 and 10).

The term "material noncompliance with the lease" includes: "(1) one or more substantial violations of the lease; (2) repeated minor violations of the lease that (a) disrupt the livability of the project; (b) adversely affect the health or safety of any person or the right of any tenant to the quiet enjoyment to the leased premises and related project facilities, (c) Interfere with the management of the project, or (d) have an adverse financial effect on the project...." (Lease agreement, p. 4, Items 23(d)(1) and (2)).

Plaintiff's termination letter to defendant notified defendant that the lease was being terminated because, "...you have committed various criminal offenses which threaten the peaceful enjoyment, safety and health of the community." Legal Memorandum 97-222 (Revised) from Chief Magistrate Griffin dated April 3, 2002 discusses the United States Supreme Court decision, *Department of Housing and Urban Development v. Rucker*, 2002 WL 451887 (March 26, 2002) concerning non-drug-related criminal activity in summary possession actions. Page 3 of the legal memo states in part:

“Federal regulations state that in an eviction by judicial action, neither arrest nor conviction are required to prove criminal activity. 24 CFR § 966.4(1)(5)(iii) (footnote omitted). Nor must the standard of proof for a criminal conviction be used. *Id.* (Use of a civil standard of proof is consistent with normal procedures in a summary possession action since such an action is civil in nature.)

The caselaw from other jurisdictions indicates that the appropriate civil standard is the “preponderance of the evidence” rather than the higher civil standard of “clear and convincing evidence” in cases involving eviction of public housing tenants....”

The legal memo further states on page 3:

“...when a public housing authority does seek to evict a tenant pursuant to its lease provisions regarding criminal activity, the Court must apply a “strict liability” standard – holding the tenant responsible whether or not the tenant knew of, or should have known of, the activity.”

Based on the documentary evidence introduced and the credibility of plaintiff’s witnesses, the Court finds plaintiff has proven their case by a preponderance of the evidence that defendant committed “criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants.” 42 U.S.C. § 1437d(1)(6) (1994 ed., Supp.V).

### CONCLUSION

Based on the foregoing, the panel finds by unanimous verdict in favor of plaintiff Owners Management Company and against defendant LaCreda L. Houchens. Therefore, the Court awards possession to the plaintiff as well as court costs.

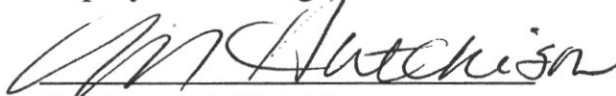
Decision announced in open Court.

**IT IS SO ORDERED** this 2<sup>nd</sup> day of December, 2010.

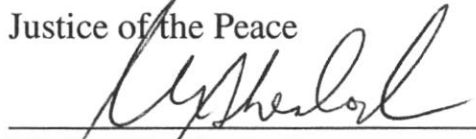
Trial De Novo Panel



Ernst M. Arndt  
Deputy Chief Magistrate



Cathleen M. Hutchison  
Justice of the Peace



Michael P. Sherlock  
Justice of the Peace